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SUBJECT: AGREEMENT WITH NICARAGUA ON STATUS OF FORCES FOR MUTUALLY AGREED ACTIVITIES IN NICARAGUA DURING 2010

REF: A) 10 MANAGUA 182

¶1. This is an action request. See paragraph 4.

¶2. Reftel A requested guidance regarding the renewal of the U.S.-Nicaragua Status of Forces Agreement (SOFA) for 2010, and regarding GON-proposed modifications to the 2009 SOFA text. The GON proposed six changes.

Guidance follows.

¶3. Regarding GON-proposed changes detailed in reftel A, concur with GON proposals to summarize 2010 activities in an annex, and agree to notify the GON of changes to activities in advance (para 1). However, other requested changes cannot be accommodated:

(1) The release of lists of personnel and of personal information is restricted per USG policy. Providing a list of crew members (including military and non-military personnel) or any other passengers on board a USS vessel as a condition of entry into a port or to satisfy local immigration officials upon arrival is prohibited.

(2) Requiring DOD personnel to enter on passports, even if caveated, is unacceptable. Not all DOD personnel have passports, and requiring all of them to obtain/maintain passports would be overly burdensome and expensive. (Para 2, line 8). Past practice in Nicaragua of authorized entry on orders and ID cards is consistent with worldwide practice and should be maintained.

(3) Substituting bring in for carry, as it pertains to U.S. forces

weapons, is inconsistent with DOD worldwide practice and past practice in Nicaragua (para 2, last line). This provision has been modified to address some of the GON concerns outlined in reftel A.

(4) U.S. forces and their equipment cannot be subject to host-nation inspection, but U.S. forces may certify that certain standards are met (para 3, line 2).

(5) the United States cannot submit its forces to host-nation legislation (para 3, line 3).

(6) Will cannot be substituted for shall because clarity in

conveying the meaning of obligation is integral to an international agreement and is consistent with USG worldwide policy.

Also note that operational activities has been replaced by mutually agreed activities to reflect more accurately the broad nature of activities to be conducted in the coming year. Please relay our concerns to the government of Nicaragua.

¶4. Please relay the updated text to the government of Nicaragua as follows. Begin text:

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of the Republic of

Nicaragua and has the honor to refer to discussions between the Government of Nicaragua and the Government of the United States of America regarding the activities that the Governments of Nicaragua and the United States have mutually agreed to conduct in 2010, which are listed in Annex A. The implementation of each of these separate activities (hereafter referred to collectively as 2010 mutually agreed activities) will be carried out to further the relationship of friendship and cooperation that exists between the Republic of Nicaragua and the United States of America. In the event that one government has identified a need to make significant changes in the nature of certain mutually agreed activities, or in the nature of personnel and equipment related to those activities, that government shall provide reasonable notification of changes to the other government in advance of the activity.

In support of 2010 mutually agreed activities, the Embassy proposes that United States military and civilian personnel (defined as members of the United States Armed Forces and civilian employees of the United States Department of Defense, respectively, hereafter referred to collectively as United States personnel) present in Nicaragua in connection with the 2010 mutually agreed activities be accorded treatment equivalent to that accorded to the administrative and technical staff of the Embassy of the United States of America under the Vienna Convention on Diplomatic Relations of April 18, 1961; that United States personnel be permitted to enter and exit Nicaragua with United States identification and with collective movement or individual travel orders; that Nicaraguan authorities shall accept as valid, without a fee or driving test, valid, unexpired driving licenses or permits issued by the appropriate authorities in the United States to United States personnel for the operation of vehicles; that such personnel be authorized to wear uniforms while performing official duties in Nicaragua; and that United States personnel be authorized to bring into Nicaragua United States Government weapons, which must be secured by United States personnel and which may be carried by United States personnel for such purposes as are agreed by both governments.

The Embassy also proposes that the Government of the Republic of Nicaragua accord duty-free importation and exportation, as well as exemption from inspections and taxation on products, property, materiel, and equipment, imported into, acquired in or exported from Nicaragua by or on behalf of the United States Government or its personnel in connection with the 2010 mutually agreed activities; and that the Parties shall cooperate in taking such steps as shall be necessary to ensure the security of United States personnel and property in Nicaragua. The Embassy further proposes vehicles, vessels, and aircraft owned or operated by or for the United States Armed Forces shall not be subject to the payment of landing or port fees, pilotage charges, navigation, overflight, or parking charges or lighterage or harbor dues while in Nicaragua; however, the United States Armed Forces shall pay reasonable charges for services requested and received.

Vehicles owned by the United States need not be registered, but shall have appropriate identification markings.

The Government of Nicaragua shall accept as valid professional licenses issued by the appropriate government authorities in the United States to United States personnel.

Title to United States Government Property (such as equipment, materiel, supplies, and other property) imported into or acquired in Nicaragua by or on behalf of the United States Department of Defense in connection with the 2010 mutually agreed activities shall remain with the United States Department of Defense, which may remove such property from Nicaragua at any time, free from export duties, taxes, and other charges. The exemption provided in this paragraph shall also extend to any duty, tax, or other charge that is assessed upon such property after importation into or acquisition in Nicaragua. United States Armed Forces and United States personnel property may be removed from Nicaragua, or disposed therein, provided that disposition of such property in Nicaragua to persons or entities not entitled to exemption from applicable taxes or duties shall be subject to payment of such taxes and duties by such persons or entities.

It shall be the responsibility of United States personnel to respect the laws of Nicaragua and to abstain from any activity inconsistent with the spirit of the 2010 mutually agreed activities. Authorities of the Government of the United States shall take necessary measures to that end. Nicaraguan and United

States military police investigators shall cooperate in the investigation of any crime believed to have been committed by or against United States personnel.

The Embassy proposes that both governments shall waive any and all claims (other than contractual claims) against each other for personal injury to or death of their military or civilian personnel, or for damage, loss, or destruction of property arising out of the 2010 mutually agreed activities.

The United States Government shall pay, in accordance with United States law, fair and reasonable compensation in settlement of meritorious claims by third parties arising out of acts or omissions of United States personnel or that are otherwise in connection with activities of the United States Armed Forces under this Agreement.

In the event that agreed activities involve the use of contractors, the United States Department of Defense may award contracts for the acquisition of articles and services in accordance with United States law and regulations. The United States Department of Defense shall have the right to choose such contractors, and such contractors and their employees who are foreigners or non-nationals of Nicaragua shall be accorded the same privileges as United States personnel with regard to licensing and registration of vehicles, drivers, and professional personnel; and with regard to the export, import, and acquisition of goods and equipment for official or personal use.

The United States Armed Forces and United States personnel may use water, electricity, and other public services and facilities, for which the Government of Nicaragua will assist the United States authorities in taking measures to obtain such services from the institutions and corresponding offices, for the appropriate development of the aforementioned 2010 mutually agreed activities. Finally, additional arrangements as may be necessary may be entered into by the appropriate authorities of the two governments. If the foregoing is acceptable to the Government of the Republic of Nicaragua, the Embassy proposes that this note, together with the Ministry's reply to that effect, shall constitute an agreement between the two governments, which shall enter into force on the date of the Ministry's reply, and shall remain in effect for the duration of the 2010 mutually agreed activities. The Embassy of the United States of America avails itself of this opportunity to renew to the Ministry of Foreign Affairs the assurances of its highest consideration.

Embassy of the United States of America,  
Managua, [date].

Attachment: Annex A - Projected list of 2010 mutually agreed activities in Nicaraguan territory

¶1. Fifteen personnel and a C-12 aircraft from the United States Naval Oceanographic Office to conduct a joint hydrographic evaluation, and to update nautical charts for the area in and around the Miskitos Keys (5 January-30 April 2010).

¶2. One P-3 aircraft from the United States Navy, for the purpose of national overflight in support of NASA missions (1 January-31 December 2010).

¶3. Ten United States Special Forces military personnel to participate in a training exchange with the Nicaraguan Special Operations Command (1 March-15 December 2010).

¶4. Five members of the United States Air Force for the purpose of a training exchange with the Nicaraguan Air Force (8-13 February 2010).

¶5. Four United States Coast Guard personnel to participate in a Subject Matter Exchange with the Nicaraguan Navy (1-27 March; 1-28 May 2010).

¶6. Three hundred United States military personnel in rotation for the Medical Readiness Exercise Beyond the Horizons (25 February-15 June 2010).

¶ 7. Three hundred United States military personnel and the vessel HSV-2 Swift of the United States Navy to conduct a Subject Matter Exchange with the Nicaraguan Navy (17 April-30 September 2010).

¶ 8. Ten United States Marines to conduct a training exchange with the Nicaraguan Navy (8-23 May; 6-21 September 2010).

¶ 9. One amphibious assault ship (LHD) from the United States Navy to participate in the Humanitarian Assistance MEDRETE exercise Continuing Promise 2010 on the Atlantic Coast in the town of Bluefields (14-27 September 2010).

¶ 10. Twenty-five United States military personnel, by rotation, and a United States Maritime Patrol Aircraft to conduct aerial counter-narcotics operations in accordance with the terms of the 2001 agreement between the governments of the United States and Nicaragua concerning cooperation to suppress illicit traffic by sea and air (1 January-15 December 2010).

¶ 11. Thirty-five United States military personnel, two UH-60 Blackhawk helicopters, and one CH-47 Chinook helicopter from the United States Armed Forces to conduct a MINI-MEDRETE exercise (1-30 May 2010).

¶ 12. Fifty United States military personnel, by rotation, four UH-60 Blackhawk helicopters, and one CH-47 Chinook helicopter from the United States Armed Forces to participate in and support aerial counter-narcotics operations in accordance with the terms of the 2001 agreement between the governments of the United States and Nicaragua concerning cooperation to suppress illicit traffic by sea and air (1 January-15 December 2010).

End text dip note on SOFA.

¶ 15. The suggested reply of the Government of the Republic of Nicaragua should read as follows: begin text: (complimentary opening) and refers to the Embassys note (number and date) which reads as follows:

(quote U.S. note in its entirety).  
The Ministry of Foreign Affairs has the further honor to inform the Embassy of the United States of America that the proposals set forth in the Embassys note are acceptable to the Government of the Republic of Nicaragua and to confirm that the Embassys note and this note shall constitute an agreement between the two governments, which shall enter into force on this date. End text.

¶ 16. Upon conclusion of the exchange of notes, Embassy should report the agreement by cable, and send the original host country note with a certified copy of the U.S. note to the Department, L/T, Room 5420

(attn: Daphne Cook).

CLINTON